

Staff Summary Report



Council Meeting Date: 1/10/08

Agenda Item Number: 63

SUBJECT: Request adoption of a resolution authorizing the issuance and sale of the City of Tempe, Arizona, Pier at Town Lake Improvement District No. 180 Improvement Bonds; delegating authority to approve certain matters with respect to the bonds; making certain tax covenants; authorizing the appointment of a registrar, transfer agent and paying agent; approving the form of certain documents and authorizing completion, execution and delivery thereof; delegating the authority to approve and deem final a form of official statement; and ratifying all actions taken or to be taken to further this resolution; and declaring an emergency.

DOCUMENT NAME: (20080110fsjh02) **IMPROVEMENT (ASSESSMENT) DISTRICTS (0805-80)**
RESOLUTION NO. 2008.02

SUPPORTING DOCS: Yes

COMMENTS: These bonds are being issued in connection with the development of the Pier at Town Lake project. The proceeds will be used to make improvements including the acquisition of rights-of-way and construction and installation of roadway, sewer, water, storm drain, landscape, pedestrian and related public improvements; to pay interest on the bonds during the construction period and thereafter up to twelve months; and to pay all costs incurred in issuing the bonds. The principal amount of the bonds will not exceed the amount of the assessments certified as unpaid. This amount is not expected to exceed \$27,000,000. The emergency clause is necessary to provide certainty to the bond market since the bonds will close within 30 days of the adoption of the resolution.

PREPARED BY: Jerry Hart, Financial Services Manager (8505)

REVIEWED BY: N/A

LEGAL REVIEW BY: Keith Hoskins, Gust Rosenfeld P.L.C., (602) 257-7967

FISCAL NOTE: The annual debt service payment on these bonds will be paid out of the Special Assessments Debt Service Fund.

RECOMMENDATION: Staff recommends approval of Resolution No. 2008.02.

ADDITIONAL INFO: N/A

RESOLUTION NO. 2008.02

RESOLUTION AUTHORIZING THE ISSUANCE AND SALE OF THE CITY OF TEMPE, ARIZONA, PIER AT TOWN LAKE IMPROVEMENT DISTRICT NO. 180 IMPROVEMENT BONDS; DELEGATING THE AUTHORITY TO APPROVE CERTAIN MATTERS WITH RESPECT TO THE BONDS; MAKING CERTAIN TAX COVENANTS; AUTHORIZING THE APPOINTMENT OF A REGISTRAR, TRANSFER AGENT AND PAYING AGENT; APPROVING THE FORM OF CERTAIN DOCUMENTS AND AUTHORIZING COMPLETION, EXECUTION AND DELIVERY THEREOF; DELEGATING THE AUTHORITY TO APPROVE AND DEEM FINAL A FORM OF OFFICIAL STATEMENT; AND RATIFYING ALL ACTIONS TAKEN OR TO BE TAKEN TO FURTHER THIS RESOLUTION; AND DECLARING AN EMERGENCY.

WHEREAS, the Superintendent of Streets of the City of Tempe, Arizona (the "City") will levy and record an assessment (the "Assessment") for City of Tempe, Arizona, Pier at Town Lake Improvement District No. 180 improvement project (the "Project") and the Superintendent of Streets will execute, and the Mayor will countersign, a warrant (the "Warrant") to collect the several assessments made pursuant to the Assessment; and

WHEREAS, the Warrant and Assessment will be returned; and

WHEREAS, Section 48-597(C), Arizona Revised Statutes, provides that the Mayor and Council may direct that improvement bonds be issued for the Project in an amount which shall not exceed the amount of unpaid assessments exceeding \$25.00 as may be shown on the certified list of unpaid assessments (the "Certified List"); and

WHEREAS, the Certified List will be filed with the Clerk by the Superintendent of Streets showing the amount of assessments remaining unpaid exceeding \$25.00 per assessment and the City may cause the bonds to be issued up to that amount; and

WHEREAS, the City will receive a proposal for the purchase of the City of Tempe, Arizona, Pier at Town Lake Improvement District No. 180 Improvement Bonds (the "Bonds") from RBC Dain Rauscher Inc., doing business under the name RBC Capital Markets (the "Underwriter"), in the form of the bond purchase agreement now on file with the Clerk and the City desires that the Bonds be sold through negotiation to the Underwriter on such terms as may hereafter be approved by the Financial Services Manager; and

WHEREAS, by this resolution, the Mayor and Council will approve the form of the bond purchase agreement now on file and order the proposed purchase agreement to be completed with the final terms of the Bonds and entered into between the City and the Underwriter when the final terms of the sale have been determined for the sale of the Bonds to the Underwriter (as so completed, the "Purchase Agreement"); and

WHEREAS, within and by the parameters set forth in this resolution, the Council will authorize the execution, issuance and sale of the Bonds and their delivery to the Underwriter in accordance with the Purchase Agreement; and

WHEREAS, the Mayor and Council hereby nominates The Bank of New York Trust Company, N.A., as registrar, transfer agent and paying agent for the Bonds (together with any successor thereto, the "Registrar"); and

WHEREAS, by this resolution the Mayor and Council desire to (1) authorize the issuance of the Bonds payable from the unpaid portion of the Assessment levied against lots or parcels of land benefiting from the Project; (2) set the form of the Bonds; (3) provide for the preparation and circulation of preliminary and final official statements; (4) authorize certain officers to establish certain terms of the Bonds and to execute the Purchase Agreement; (5) provide for issuance and delivery of the Bonds to the Underwriter in accordance with the Purchase Agreement; (6) designate a registrar, transfer agent and paying agent and approve a form of contract therefor; (7) authorize the registrar to open books to register ownership of the Bonds pursuant to a book-entry-only system; (8) order the Bonds delivered to the Underwriter; (9) provide for the repayment of the Bonds; (10) approve a continuing disclosure certificate; (11) ratify and confirm all prior acts of this Council, the Financial Services Manager, the Superintendent of Streets and the City Clerk with respect to the Project and the Bonds; and (12) declare an emergency to exist with respect to the effectiveness of this Resolution;

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF TEMPE, ARIZONA, that:

Section 1. Authorization and Terms. The Bonds are hereby authorized to be issued, said Bonds to be dated their date of initial delivery, in a total principal amount of not to exceed the amount certified as unpaid on the Certified List, bearing interest from their date to the maturity of each of the Bonds at a rate not to exceed 12% per annum, said interest payable January 1 and July 1 of each year beginning July 1, 2008. The yield (as determined pursuant to the regulations of the Internal Revenue Code) on the Bonds shall not exceed 7.00%. The Bonds will be in denominations of \$5,000 or integral multiples thereof and will mature in not more than twenty-five annual installments on January 1 of each year, commencing no earlier than in the year 2010 and continuing until no later than in the year 2029. The principal amount maturing in each year shall be determined by the Financial Services Manager, based on the certified list of unpaid assessments and the interest rate, to produce as nearly as practicable level debt service on the Bonds.

Section 2. Prior Redemption.

A. **Optional and Special Redemption.** The Bonds shall be subject to optional and special redemption as set forth in the Purchase Agreement.

B. **Mandatory Redemption.** The Bonds shall be subject to mandatory redemption as set forth in the Purchase Agreement.

Whenever Bonds subject to mandatory redemption are purchased, redeemed (other than pursuant to mandatory redemption) or delivered by the City to the Registrar for cancellation, the principal amount of the Bonds so retired shall satisfy and be credited against the mandatory redemption requirements for such Bonds for such years as the City may direct.

C. **Notice of Redemption.** Notice of redemption of any Bond will be filed with the Registrar and mailed to the owner thereof at the address shown on the books of the Registrar not more than sixty (60) nor less than thirty (30) days prior to the redemption date. Notice of redemption

may be given to any securities depository by mail, facsimile, wire or other generally accepted means of transmission of such notices. Failure to properly give notice of redemption shall not affect the redemption of any Bond for which notice was properly given.

D. **Effect of Call for Redemption.** On the date designated for redemption by notice given as herein provided, the Bonds so called for redemption shall become and be due and payable at the redemption price provided for redemption of such Bonds on such date, and, if moneys for payment of the redemption price are held in separate accounts by the Registrar, interest on such Bonds or portions of such Bonds so called for redemption shall cease to accrue, such Bonds shall cease to be entitled to any benefit or security hereunder and the owners of such Bonds shall have no rights in respect thereof except to receive payment of the redemption price thereof and such Bonds shall be deemed paid and no longer outstanding.

E. **Redemption of Less Than All of a Bond.** The City may redeem an amount which is included in a Bond in the denomination in excess of, but divisible by, \$5,000. In that event, the owner shall submit the Bond for partial redemption and the Registrar shall make such partial payment and the Registrar shall cause to be issued a new Bond in a principal amount equal to the unpaid amount remaining on such Bond after the redemption to be authenticated and delivered to the owner thereof.

Section 3. Form of Bonds; Book-Entry-Only System.

A. **Form of Bonds.** The Bonds shall be in substantially the form of Exhibit A, attached hereto and incorporated by reference herein, with such necessary and appropriate omissions, insertions and variations as are permitted or required hereby, by Arizona law or by the Purchase Agreement and are approved by those officers executing the Bonds and execution thereof by such officers shall constitute conclusive evidence of such approval.

The Bonds may have notations, legends or endorsements required by law, securities exchange rule or usage. Each Bond shall be dated the date of its authentication and registration.

The Bonds are prohibited from being converted to coupon or bearer bonds without the consent of this Council and approval of bond counsel.

B. **Book-Entry-Only System.** The Bonds will be issued in the form of book-entry-only certificates registered in the name of a Depository (the "Depository") or its nominee, as owner. Initially the Bonds will be registered in the name of Cede & Co., as nominee for Depository Trust Company ("DTC"), as Depository pursuant to the book-entry-only system of DTC (the "Book-Entry-Only System"). So long as the Bonds are in the Book-Entry-Only System, all payments of principal and interest will be paid to the Depository or its nominee (initially Cede & Co.) and such payments to the Depository or its nominee will satisfy the City's obligations hereunder.

There shall be a single Bond for each maturity of the Bonds, representing the entire aggregate principal amount of that maturity, and the Bonds shall be registered in the name of the Depository or its nominee, as Owner, and immobilized initially in the custody of the Depository or the Registrar on behalf of the Depository. Beneficial ownership interests in the Bonds shall be available pursuant to the Book-Entry-Only System through direct and indirect DTC participants.

So long as the Bonds are administered under the Book-Entry-Only System, interest payments and principal payments shall be paid to Cede & Co. or its registered assigns in same-day funds no later than the time established by DTC on each interest or principal payment date (or in accordance with then existing arrangements between the City and DTC). The Financial Services Manager is authorized to enter into an agreement (the "Letter of Representations") with DTC in connection with the issuance of the City's bonds including the Bonds and, while the Letter of Representations is in effect, the procedures established therein shall apply to the Bonds.

The City, upon 30 days' notice to the Depository and the Registrar, may remove or replace the Depository. No other action by the City shall be required to effect such a removal or replacement. The Depository may determine not to continue to act as Depository for the Bonds upon 30-days written notice to the City and the Registrar. The beneficial owners have no right to either a Book-Entry-Only System or a Depository for the Bonds.

Notwithstanding any other provision of this Resolution or the Bonds, so long as the Bonds are in a Book-Entry-Only System and the Depository or its nominee is the registered owner of the Bonds:

(i) **Presentation.** Presentation of Bonds to the Registrar at redemption or at maturity, shall be deemed made to the Registrar pursuant to the procedures of the Book-Entry-Only System and actual presentation or surrender of the Bonds is not required.

(ii) **Fractionalized Representation.** The Depository may present notices, approvals, waivers, votes or other communications required or permitted to be made by owners under this Resolution on a fractionalized basis on behalf of some or all of those persons entitled to exercise ownership rights in the Bonds through the Depository or its participants.

(iii) **Limitations on Transfer.** Bonds or any portion thereof shall not be transferable or exchangeable except:

(A) To any successor of the Depository;

(B) To any new Depository, upon (I) the resignation of the then current Depository or its successor from its functions as Depository or (II) termination of the use of the Depository by direction of the City; or

(C) To any persons who are the assigns of the Depository or its nominee, upon (I) the resignation of the Depository from its functions as Depository hereunder or (II) termination by the City of use of the Depository.

C. **If No Book-Entry-Only System in Effect.** If the use of the Book-Entry-Only System is discontinued, then after the City has made provision for notification of the beneficial owners of their book entry interests in the Bonds by appropriate notice to the then Depository, the City and the Registrar shall permit withdrawal of the Bonds from the Depository, and authenticate and deliver Bond certificates in fully registered form and in denominations authorized by this Resolution to the assignees of the Depository or its nominee. Such withdrawal, authentication and delivery shall be at the cost and expense (including costs of printing or otherwise preparing, and delivering, such replacement Bond certificates) of the City.

If the Book-Entry-Only System is not in effect, the following provisions will apply:

(i) Interest on the Bonds will be paid on each Interest Payment Date by check mailed to the registered owner thereof at such owner's address as shown on the registration books maintained by the Registrar, as of the close of business of the Registrar on the fifteenth (15th) day of the month preceding an Interest Payment Date (the "Record Date").

(ii) Principal of the Bonds will be payable, when due, only upon presentation and surrender of the Bond at the principal corporate trust office of the Registrar.

(iii) Payment of interest and, if adequate terms of surrender of such Bonds are made with the Registrar, principal may be paid to the owner of at least \$1,000,000 principal amount of Bonds outstanding, by wire transfer to an account of such owner located within the continental United States, if such owner provides a written request to the Registrar at least twenty (20) days prior to an Interest Payment Date, which request shall specify the wire transfer instructions.

Section 4. Registrar and Paying Agent. The City shall maintain an office or agency where the Bonds may be presented for registration of transfer and an office or agency for payment of principal and interest. The Registrar shall keep a register of the Bonds and their transfer. The City may appoint one or more successor Registrars or one or more additional transfer agents or paying agents. Each paying agent shall be required to agree in writing that the paying agent will hold in trust for the benefit of the various owners of the Bonds all money held by the paying agent for the payment of principal and interest on the Bonds. The City may change the Registrar, and any additional transfer agent or paying agent without notice or consent of the owners of the Bonds. The Registrar or any additional transfer agent or paying agent may make reasonable rules and set reasonable requirements for their respective functions with respect to the owners of the Bonds.

The Registrar, is hereby named registrar, transfer agent and paying agent for the Bonds. The Registrar is directed to open registration books for the purpose of registering ownership in the Bonds. The Registrar's books shall be the sole and only evidence of ownership.

The Mayor, City Manager, Financial Services Manager, Clerk or other appropriate officer are hereby authorized to execute and deliver a registrar, transfer agent and paying agent agreement (the "Agency Agreement") containing terms in substantially the form on file with the City Clerk.

The Registrar may appoint an authenticating agent acceptable to the City to authenticate Bonds. An authenticating agent may authenticate Bonds whenever the Registrar may do so. Each reference in this resolution to authentication by the Registrar includes authentication by an authenticating agent acting on behalf and in the name of the Registrar and subject to the Registrar's direction.

The Registrar shall keep a register of the Bonds, the registered owners of the Bonds and of transfer of the Bonds. When Bonds are presented to the Registrar or any additional transfer agent with a request to register a transfer, the Registrar will register the transfer on the registration books if its requirements for transfer are met and will authenticate and deliver one or more Bonds registered in the name of the transferee of the same principal amount, maturity and rate of interest as the surrendered Bonds. Bonds presented to the Registrar for transfer after the close of business on the

Record Date and before the close of business on the next subsequent interest payment date will be registered in the name of the transferee but the interest payment will be made to the registered owners shown on the books of the Registrar as of the close of business on the Record Date.

The Registrar shall authenticate Bonds for original issue up to the aggregate principal amount authorized in Section 1 hereof upon the written request of the Financial Services Manager. The aggregate principal amount of Bonds outstanding at any time may not exceed that amount except for replacement Bonds as to which the requirements of the Registrar and the City are met.

The fees and costs of the Registrar, or any additional transfer agent or paying agent to be paid by the City are deemed interest on the Bonds for purposes of collecting such amounts as interest on the Assessment.

So long as the Bonds are in the Book-Entry-Only System, the City, the Registrar, and any additional transfer agent or paying agent shall only recognize DTC or its nominee as the registered owner of all of the Bonds for all purposes, including payments, notices and voting.

Section 5. Execution of Bonds and Other Documents.

A. **Bonds.** The Bonds shall be executed for and on behalf of the City by its Mayor and attested by the Clerk by manual or facsimile signature. If an officer whose signature is on a Bond no longer holds that office at the time the Bond is authenticated and registered, such Bond shall nevertheless be valid.

A Bond shall not be valid or binding until authenticated by the manual signature of an authorized representative of the Registrar. The signature of the authorized representative of the Registrar shall be conclusive evidence that such Bond has been authenticated and issued pursuant to this resolution.

B. **Purchase Agreement.** The form of the Purchase Agreement, as presented to the Mayor and Council, is hereby approved and the Mayor, any member of this Council or the Financial Services Manager is hereby authorized to execute the Purchase Agreement on behalf of the City. The shall cause the Purchase Agreement to be completed to reflect the terms of the Bonds, including the price at which the Bonds are sold and provisions for original issue premium or original issue discount with respect thereto. The execution and delivery of the Purchase Agreement as completed shall be conclusive evidence of such approval of the final terms and provisions.

C. **Registrar Contract.** The Agency Agreement, in substantially the form submitted to and on file with the Mayor and Council, is hereby approved and the Mayor, any member of the Council, or the Financial Services Manager are hereby directed to execute such contract on behalf of the City with such necessary and appropriate omissions, insertions and variations as are permitted or required hereby and are approved by those officers executing the documents and cause such respective contract to be delivered. Execution by any such officer shall constitute conclusive evidence of such approval.

D. **Continuing Disclosure Undertaking.** In order to comply with the provisions of Section 240.15c2-12, General Rules and Regulations, Securities Exchange Act of 1934 (the "Rule"), unless an exemption from the terms and provisions of the Rule is applicable to the Bonds, the Financial Services Manager is hereby authorized and directed to prepare, execute and deliver on behalf

of the City a written agreement or undertaking for the benefit of the Owners (including beneficial owners) of the Bonds. The written agreement or undertaking shall contain such terms and provisions as are necessary to comply with the Rule including, but not limited to (i) an agreement to provide (either directly or through a central transmitting entity (the "CPO") approved for such purpose by the Securities and Exchange Commission) to each nationally recognized municipal securities information repository and to the Arizona state information depository, if one shall be so designated by the State of Arizona, the financial information or operating data presented in the final official statement as determined by mutual agreement between the Financial Services Manager and the Underwriter and audited financial statements of the City, and (ii) an agreement to provide (either directly or through the CPO) material events disclosure to nationally recognized municipal securities information repositories or to any state information depository hereinafter designated and the Municipal Securities Rulemaking Board.

E. **Official Statement.** The preparation and dissemination of a preliminary official statement, as presented to the Mayor and Council and on file with the City Clerk, is hereby authorized and approved. The preliminary official statement shall be in a final form that is approved and deemed as "final" for all purposes of the Rule by the Mayor or the Financial Services Manager. The Mayor or Financial Services Manager shall approve and cause a final official statement (the "Official Statement") in substantially the form of the preliminary official statement referred to above to be prepared and distributed with the Bonds within seven business days of the execution of the Purchase Agreement. The Mayor or Financial Services Manager is authorized to execute and deliver the Official Statement on behalf of the City.

Section 6. Mutilated, Lost or Destroyed Bonds. In case any Bond becomes mutilated or destroyed or lost, the City shall cause to be executed and delivered a new Bond of like date and tenor in exchange and substitution for and upon the cancellation of such mutilated Bond or in lieu of and in substitution for such Bond destroyed or lost, upon the registered owner's paying the reasonable expenses and charges of the City in connection therewith and, in the case of the Bond destroyed or lost, filing with the City by the registered owner evidence satisfactory to the City that such Bond was destroyed or lost, and furnishing the City with a sufficient indemnity bond pursuant to § 47-8405, Arizona Revised Statutes.

Section 7. Acceptance of Offer; Sale of Bonds; Purchase Agreement Approval. The Underwriter proposes to purchase the Bonds pursuant to the Purchase Agreement submitted to and on file with the Clerk. Such proposal as supplemented by the final terms as contemplated by this resolution is hereby accepted. When the final terms of the Bonds are known, the Purchase Agreement shall be finalized. The Mayor or the Financial Services Manager or any member of the Council are authorized and directed to determine the final terms of the Bonds and to complete and execute the Purchase Agreement; provided, however, that the parameters of this resolution shall govern the Purchase Agreement and no officer is authorized to insert in the Purchase Agreement any terms or conditions which would be contrary to this resolution. Upon the completion, execution and delivery of the Purchase Agreement, the Bonds are ordered sold to the Underwriter pursuant to the Purchase Agreement.

The Financial Services Manager is hereby authorized and directed to cause the Bonds to be delivered to or upon the order of the Underwriter upon receipt of payment therefor and satisfaction of the other conditions for delivery thereof in accordance with the terms of the Purchase Agreement.

Section 8. Funds and Accounts. The following funds and accounts are hereby created:

1. Bond Fund, which shall include:
 - A. Principal Account
 - B. Interest Account
2. Construction Fund.

Section 9. Use of Monies.

A. The moneys in the Bond Fund shall be held by the City and paid over to the Registry within 30 days of each principal or interest payment date. The Financial Services Manager shall make such arrangements as are necessary to insure proper payment to the paying agent.

B. All moneys directed by this Resolution to be placed in the Bond Fund shall be invested pending payments to the paying agent in "Investment Securities". "Investment Securities" are hereby defined as any securities in which sinking funds of the state may be invested.

C. All moneys received by the City from the collections of the installments of principal and interest on the assessment shall be allocated as to principal and interest and deposited to the proper account. Prepayments of assessments may be held in a separate account and deposited into the Principal Account and Interest Account as may be necessary.

Section 10. Use of Proceeds. The amounts received from the sale of the Bonds together with amounts collected on the Assessment in cash as shown on the Certified List shall be deposited to the following Accounts:

1. To the Interest Account of the Bond Fund any portion of the proceeds designated for capitalized interest.

2. The balance shall be placed in the Construction Account and used to pay, or reimburse the City for, the cost of construction of the work and acquisition of improvements and rights-of-way described in Resolution No. 2007-78 (the Resolution of Intention) and to pay, or reimburse the City for, all incidental expenses including but not limited to:

- (a) engineering expenses;
- (b) legal and financial advisory fees and expenses;
- (c) printing, posting, publication and mailing expenses;
- (d) registrar, transfer agent and paying agent's initial fees;
- (e) printing of the bonds, Offering Statement and Final Official Statement;
- (f) rating agency fees; and
- (g) other fees incidental to the issuance of the Bonds.

This Resolution shall be construed as consent of the Mayor and Council to invest such funds, pending use, in any of the securities allowed by law.

Any bond proceeds remaining in the Construction Fund after all costs of the Project have been paid or provided for shall be used to pay principal and interest on the Bonds, at the discretion of the City, either when due or through optional or special redemption as may be applicable.

Any amounts collected on the Assessment in cash and remaining in the Construction Fund after all costs of the Project have been paid or provided for shall be returned to the property owners who made such payments, or their successors in interest, as may be determined by the City.

Section 11. Bond Insurance or Credit Enhancement. The Financial Services Manager is authorized to expend, or cause to be expended, Bond proceeds for the purchase of bond insurance or other credit enhancement for the Bonds, and to execute and deliver such agreements, certificates or other documents reasonably necessary to obtain such bond insurance or other credit enhancement.

Section 12. Tax Covenants. In consideration of the purchase and acceptance of the Bonds by the owners thereof and, as authorized by Arizona Revised Statutes, Title 35, Article 7 enacted as Chapter 226, Laws of 1986, in consideration of retaining the exclusion of interest income on the Bonds from gross income for purposes of calculating federal income tax, the City covenants with the owners from time to time of the Bonds to neither take nor fail to take any action which action or failure to act is within its power and authority and would result in interest on the Bonds becoming included as gross income for purposes of calculating federal income taxes under laws existing on the date of issuance of the Bonds or such laws as they may be modified or amended.

Without limiting the generality of the foregoing, the City agrees that it will comply with such requirements as in the opinion of Gust Rosenfeld P.L.C. or other nationally recognized bond counsel are necessary to prevent interest on the Bonds becoming included as gross income for purposes of calculating federal income taxes. Such requirements may include but are not limited to making further specific covenants; making truthful certifications and representations and giving necessary assurances; complying with all representations, covenants and assurances contained in certificates or agreements to be prepared by bond counsel; paying to the United States of America any required amounts representing rebates of arbitrage profits relating to the Bonds; filing forms, statements and supporting documents as may be required under the federal tax laws; limiting the term of and yield on investments made with moneys relating to the Bonds; and limiting the use of the proceeds of the Bonds and property financed thereby.

Section 13. Temporary Loans. Pursuant to Arizona Revised Statutes Section 48-609, the City may, but is not so obligated to, make good any deficiency in the funds collected from special assessments by a temporary loan from some other fund. The City hereby covenants, to the extent such covenant is permitted by law and to the extent the funds therefor are included in the City's adopted budget for the applicable fiscal year, to make such temporary loans from any funds available for that purpose on or before December 31 and June 30 in each of the years in which payments of the principal or interest are due to make good any deficiency in the funds collected from special assessments as may be necessary to make payment of principal and interest on the Bonds when due on the next succeeding January 1 or July 1, as the case may be, regardless of whether such deficiency is due to delinquencies or delays in assessment collections, failure to complete the improvements, insufficient valid assessments or any other reason.

Section 14. Enforcement of Community Facilities District Assessments. The City waives any right to cause the Rio Salado Community Facilities District (the "Community Facilities District") to enforce any assessment against the property assessed to pay the Bonds in any manner when such enforcement would prevent the prompt enforcement of the liens of the assessment securing the Bonds. The Community Facilities District is requested to acknowledge this waiver and agree that it will not undertake any such enforcement.

Section 15. Release of Parcel from Assessment.

A. **Providing for Payment.** Any parcel may be released from the lien of the Assessment upon compliance with any one of the following:

(i) **Payment When Due.** By paying or causing to be paid the principal of and interest on the portion of the Assessment allocated to that parcel as and when the same become due and payable;

(ii) **Advance Cash Deposit.** By depositing with a depository trustee, in trust for such purpose, money which is fully sufficient to pay or cause to be paid all the principal of, interest to maturity or earlier redemption and redemption premium, if any, on an amount of Bonds (rounded up to an even denomination if to be redeemed early) equal to the portion of the Assessment allocated to that parcel; or

(iii) **Government Obligations Deposit.** By depositing with a depository trustee, in trust for such purpose, cash and non-callable Government Obligations (as defined in paragraph (F) below) in such amount as shall be certified to the City by a national firm of certified public accountants as being fully sufficient, together with the interest to accrue thereon, to pay or cause to be paid all the principal of, interest to maturity or earlier redemption and redemption premium, if any, on an amount of Bonds (rounded up to an even denomination if to be redeemed early) equal to the portion of the Assessment allocated to that parcel.

B. **Notice of Redemption and Release.** If, to carry out the release of a parcel from the Assessment, any Bonds or portions thereof are to be redeemed in advance of maturity then the City shall cause notice of such redemption to be given in accordance with the provisions hereof; and provided further, that if any such Bonds or portions thereof will not mature or be redeemed within sixty (60) days of the deposit referred to in paragraphs (ii) or (iii) of this Section 14, the City shall cause notice of such deposit to be given by first class mail to the owners of the Bonds outstanding.

C. **Liquidation and Reinvestment.** After provision for the allocated portion of the Assessment has been made under (iii) above, at the direction of the City, all or any part of the Government Obligations held by the depository trustee may be liquidated and the proceeds therefrom together with all or any portion of the moneys held by the depository trustee may be used to acquire other Government Obligations which the depository trustee shall hold, provided that thereafter the moneys and Government Obligations held by the depository trustee shall remain sufficient, as evidenced by a certificate of national firm of certified public accountants to pay and discharge the same amount of Bonds (including all principal and interest and redemption premium) at the same respective maturity dates or prior redemption dates.

D. **Opinion of Bond Counsel.** No release may be made by a deposit pursuant to (ii) or (iii) of this Section 14 and no liquidation or acquisition may be made pursuant to paragraph (C) of this Section 14 if, as a result thereof, or of any other action in connection with which provisions for payment of some or all of the Bonds is made, the interest payable on any Bond is thereby made includable in gross income for federal income tax purposes. The City may rely upon an opinion of nationally recognized bond counsel (which opinion may be based upon a ruling or rulings of the Internal Revenue Service) to the effect that the provisions of this paragraph will not be breached by so providing for the payment of any portion of the Assessment or any Bond or portion thereof.

E. **The Depository Trustee.** The depository trustee shall be any bank or trust company designated by the City, with a combined capital and surplus of at least Fifty Million Dollars (\$50,000,000) and subject to supervision or examination by federal or State of Arizona authority.

F. **Government Obligations.** Government obligations means direct general obligations of, or obligations the timely payment of principal and interest on which are fully and unconditionally guaranteed by, the United States of America (including, without limitation, the interest portion of obligations issued by the Resolution Funding Corporation in book entry form and stripped by request to the Federal Reserve Bank of New York), including Government Obligations which have been stripped of their unmatured interest coupons and interest coupons stripped from Government Obligations, provided any stripped Government Obligations have been stripped by the applicable U.S. Governmental Agency.

Section 16. Resolution a Contract. This resolution shall constitute a contract between the City and the registered owners of the Bonds and shall not be repealed or amended in any manner which would impair, impede or lessen the rights of the registered owners of the Bonds then outstanding.

Section 17. Severability. If any section, paragraph, subdivision, sentence, clause or phrase of this resolution is for any reason held to be illegal or unenforceable, such decision will not affect the validity of the remaining portions of this resolution. The Mayor and Council hereby declare that the City would have adopted this resolution and each and every other section, paragraph, subdivision, sentence, clause or phrase hereof and authorized the issuance of the Bonds pursuant hereto irrespective of the fact that any one or more sections, paragraphs, subdivisions, sentences, clauses or phrases of this resolution may be held illegal, invalid or unenforceable.

Section 18. Ratification of Actions. All actions of the officers and agents of the City which conform to the purposes and intent of this resolution and which further the issuance and sale of the Bonds as contemplated by this resolution whether heretofore or hereafter taken shall be and are hereby ratified, confirmed and approved. The proper officers and agents of the City are hereby authorized and directed to do all such acts and things and to execute and deliver all such documents on behalf of the City as may be necessary to carry out the terms and intent of this resolution.

Section 19. Emergency. The immediate operation of the provisions of this Resolution is necessary to meet a public emergency affecting life, health, property or the public peace. City acknowledges that uncertainty in the bond market would impair the City's ability to market the Bonds in an orderly and efficient manner if there were a significant gap between the date of adoption and the date of effectiveness of this Resolution. Therefore, time is of the essence in the adoption of this Resolution. An emergency is hereby declared to exist and this Resolution shall be in full force and effect from and after its adoption by the City Council of the City of Tempe.

PASSED AND ADOPTED on January 10, 2008.

Hugh Hallman, Mayor

ATTEST:

Jan Hort, City Clerk

Approved as to form:

Andrew Ching, City Attorney

CERTIFICATION

I, Jan Hort, the duly appointed and acting City Clerk of the City of Tempe, Arizona, do hereby certify that the above and foregoing Resolution No. _____ was duly passed by the City Council of the City of Tempe, Arizona, at a regular meeting held on January 10, 2008, and the vote was ____ aye's and ____ nay's and that the Mayor and ____ Council Members were present thereat.

DATED: January 10, 2008

City Clerk

EXHIBIT A

No. R-_____

\$ _____

Unless this Bond is presented by an authorized representative of The Depository Trust Company, a New York corporation ("DTC"), to the City or its agent for registration of transfer, exchange, or payment, and any Bond issued is registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), any transfer, pledge, or other use hereof for value or otherwise by or to any person is wrongful inasmuch as the registered owner hereof, Cede & Co., has an interest herein.

**CITY OF TEMPE, ARIZONA
PIER AT TOWN LAKE IMPROVEMENT DISTRICT NO. 180
IMPROVEMENT BONDS**

<u>Interest Rate</u>	<u>Original Issue Date</u>	<u>Maturity Date</u>	<u>CUSIP</u>
_____%	_____, 2008	_____, ____	_____

Registered Owner: **CEDE & CO.**

Principal Amount: _____ AND NO/100 DOLLARS (_____.00)

The CITY OF TEMPE, ARIZONA (the "City"), a duly value received, hereby promises to pay to the registered owner identified above, or registered assigns as provided herein, on the maturity date set forth above, the principal amount set forth above, and to pay interest on the unpaid principal amount at the interest rate shown above.

Bonds maturing on or before January 1, ____ are not subject to redemption prior to maturity. Bonds maturing on or after January 1, ____ will be subject to call for redemption prior to maturity, at the option of the City, in whole or in part, on January 1, ____ or on any date thereafter by the payment of a redemption price equal to the principal amount of each bond called for redemption plus accrued interest to the date fixed for redemption, but without premium.

Interest is payable on January 1 and July 1 of each year commencing July 1, 2008, and will accrue from the most recent date to which interest has been paid, or, if no interest has been paid, from the original dated date set forth above. Interest will be computed on the basis of a year comprised of 360 days consisting of twelve (12) months of thirty (30) days each.

Principal of and interest on this bond are payable in lawful money of the United States of America. Interest payments and principal payments that are part of periodic principal and interest payments shall be received by Cede & Co., as nominee of DTC, or its registered assigns in same-day funds no later than the time established by DTC on each interest or principal payment date in accordance with existing arrangements between the City and DTC.

It is hereby certified and recited that:

This bond is issued in pursuance of law and represents one of an issue of bonds in the total sum of \$ _____ issued for that certain improvement in the City known as City of Tempe, Arizona, Pier at Town Lake Improvement District No. 180 Improvement Bonds and is payable only out of the special fund to be collected from special assessments imposed on the lots or parcels of land benefited by said improvement. Said special fund is set apart by law for the payment of said bonds and can be used for no other purpose. It is hereby certified and declared that the improvement for which this issue of bonds is issued is authorized by law, that all conditions, acts and things required by the Constitution and laws of the State of Arizona to exist, to occur and to be performed precedent to and in the issuance of this bond exist, have occurred and have been performed and in regular and due form as required by the Constitution and laws of the State of Arizona and all ordinances and resolutions of the City. The special assessments out of which the bonds are to be paid are first liens on the property assessed, subject only to the lien for general taxes and prior special assessments and any bona fide purchaser for value of this bond has the right to rely on the recitals herein contained. For the assessment or reassessment, collection and payment of said special assessments, the full faith and diligence of the City are hereby irrevocably pledged.

The registrar or paying agent may be changed by the Town without notice.

So long as the book-entry-only system is in effect, this bond is non-transferable. If the book-entry-only system is discontinued, this bond is transferable by the registered owner in person or by attorney duly authorized in writing at the designated office of the registrar, which on the original issue date is the corporate trust office of _____ upon surrender and cancellation of this bond. Bonds of this issue are issuable only in fully registered form in the denomination of \$5,000 of principal or integral multiples thereof.

The City, the registrar and the paying agent may treat the registered owner of this bond as the absolute owner for the purpose of receiving principal and interest and for all other purposes and none of them shall be affected by any notice to the contrary.

The City has caused this bond to be executed by its Mayor and attested by its Clerk, which signatures may be facsimile signatures. This bond is not valid or binding upon the City without the manually affixed signature of an authorized representative of the registrar. This bond is prohibited from being issued in coupon or bearer form without the consent of the Mayor and Council of the City, and the occurrence of certain other conditions.

CITY OF TEMPE, ARIZONA

Mayor

ATTEST;

Clerk

DATE OF AUTHENTICATION AND REGISTRATION: _____

AUTHENTICATION CERTIFICATE

This bond is one of the City of Tempe, Arizona, Pier at Town Lake Improvement District No. 180 Improvement Bonds described above.

_____, as Registrar

By _____
Authorized Representative

The following abbreviations, when used in the inscription on the face of this bond, shall be construed as though they were written out in full according to applicable laws or regulations:

STATEMENT OF INSURANCE (if applicable)

FORM OF ASSIGNMENT

The following abbreviations, when used in the inscription on the face of this bond, shall be construed as though they were written out in full according to applicable laws or regulations:

TEN COM - as tenants in common	UNIF GIFT/TRANS MIN ACT-_____ Custodian _____
TEN ENT - as tenants by the entireties	(Cust) _____ (Minor) _____
JT TEN - as joint tenants with right of survivorship and not as tenants in common	under Uniform Gifts/Transfers to Minors Act _____ (State) _____

Additional abbreviations may also be used though not in list above

ASSIGNMENT

FOR VALUE RECEIVED the undersigned hereby sells, assigns and transfers unto

(Name and Address of Transferee)
the within bond and all rights thereunder, and hereby irrevocably constitutes and appoints

_____, attorney to transfer the within bond on the books kept for registration thereof, with full power of substitution in the premises.

Dated _____

Note: The signature(s) on this assignment must correspond with the name(s) as written on the within registered bond in every particular without alteration or enlargement or any change whatsoever.

Signature Guaranteed:

Firm or Bank

Authorized Signature

Signature guarantee should be made by a guarantor institution participating in the Securities Transfer Agents Medallion Program or in such other program acceptable to the Registrar

ALL TRANSFER COSTS SHALL BE BORNE BY THE TRANSFEROR

EXHIBIT A

No. R-_____

\$_____

Unless this Bond is presented by an authorized representative of The Depository Trust Company, a New York corporation ("DTC"), to the Town or its agent for registration of transfer, exchange, or payment, and any Bond issued is registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), any transfer, pledge, or other use hereof for value or otherwise by or to any person is wrongful inasmuch as the registered owner hereof, Cede & Co., has an interest herein.

**CITY OF TEMPE, ARIZONA
PIER AT TOWN LAKE IMPROVEMENT DISTRICT NO. 180
IMPROVEMENT BONDS**

<u>Interest Rate</u>	<u>Original Issue Date</u>	<u>Maturity Date</u>	<u>CUSIP</u>
_____%	_____, 2008	_____ 1, _____	_____

Registered Owner: **CEDE & CO.**

Principal Amount: _____ AND NO/100 DOLLARS (_____.00)

The CITY OF TEMPE, ARIZONA (the "City"), a duly value received, hereby promises to pay to the registered owner identified above, or registered assigns as provided herein, on the maturity date set forth above, the principal amount set forth above, and to pay interest on the unpaid principal amount at the interest rate shown above.

Bonds maturing on or before January 1, _____ are not subject to redemption prior to maturity. Bonds maturing on or after January 1, _____ will be subject to call for redemption prior to maturity, at the option of the City, in whole or in part, on January 1, _____ or on any date thereafter by the payment of a redemption price equal to the principal amount of each bond called for redemption plus accrued interest to the date fixed for redemption, but without premium.

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Principal of and interest on this bond are payable in lawful money of the United States of America. Interest payments and principal payments that are part of periodic principal and interest payments shall be received by Cede & Co., as nominee of DTC, or its registered assigns in same-day funds no later than the time established by DTC on each interest or principal payment date in accordance with existing arrangements between the City and DTC.

It is hereby certified and recited that:

This bond is issued in pursuance of law and represents one of an issue of bonds in the total sum of \$_____ issued for that certain improvement in the City known as City of Tempe, Arizona, Pier at

Town Lake Improvement District No. 180 Improvement Bonds and is payable only out of the special fund to be collected from special assessments imposed on the lots or parcels of land benefited by said improvement. Said special fund is set apart by law for the payment of said bonds and can be used for no other purpose. It is hereby certified and declared that the improvement for which this issue of bonds is issued is authorized by law, that all conditions, acts and things required by the Constitution and laws of the State of Arizona to exist, to occur and to be performed precedent to and in the issuance of this bond exist, have occurred and have been performed and in regular and due form as required by the Constitution and laws of the State of Arizona and all ordinances and resolutions of the City. The special assessments out of which the bonds are to be paid are first liens on the property assessed, subject only to the lien for general taxes and prior special assessments and any bona fide purchaser for value of this bond has the right to rely on the recitals herein contained. For the assessment or reassessment, collection and payment of said special assessments, the full faith and diligence of the City are hereby irrevocably pledged.

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CITY OF TEMPE, ARIZONA

Mayor

ATTEST;

Clerk

DATE OF AUTHENTICATION AND REGISTRATION: _____

AUTHENTICATION CERTIFICATE

This bond is one of the City of Tempe, Pier at Town Lake Improvement District No. 180 Improvement Bonds described above.

_____, as Registrar

By _____
Authorized Representative

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The following abbreviations, when used in the inscription on the face of this bond, shall be construed as though they were written out in full according to applicable laws or regulations:

TEN COM - as tenants in common

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JT TEN - as joint tenants with right of survivorship
and not as tenants in common

UNIF GIFT/TRANS MIN ACT- _____ Custodian _____
(Cust) (Minor)

under Uniform Gifts/Transfers to Minors Act _____ (State) _____

Additional abbreviations may also be used though not in list above

ASSIGNMENT

FOR VALUE RECEIVED the undersigned hereby sells, assigns and transfers unto

(Name and Address of Transferee)

the within bond and all rights thereunder, and hereby irrevocably constitutes and appoints _____
_____, attorney to transfer the within bond on the books
kept for registration thereof, with full power of substitution in the premises.

Dated _____

Note: The signature(s) on this assignment must correspond with the name(s) as written on the within registered bond in every particular without alteration or enlargement or any change whatsoever.

Signature Guaranteed:

Firm or Bank

Authorized Signature

Signature guarantee should be made by a guarantor institution participating in the Securities Transfer Agents Medallion Program or in such other program acceptable to the Registrar

ALL TRANSFER COSTS SHALL BE BORNE BY THE TRANSFEROR